IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7939 OF 2006

The Agricultural Produce Market Committee, Akkalkot. .... Petitioner

Vs.

The State of Maharashtra & Ors. .... Respondents

WITH
WRIT PETITION NO. 4694 OF 2007

Shri Balbhim Dattatraya Shinde & Ors. .... Petitioners

Vs.

The State of Maharashtra & Ors. .... Respondents

Mr. G.S. Godbole for Petitioner.

Mr. A.A. Kumbhakoni, Asstt. Adv. General a/w Mrs. M.P. Thakur, AGP for respondents

CORAM : S.B. MHASE, AND
R.S. MOHITE, JJ

DATE : 25TH JUNE, 2007

P.C.

1) The Petitioners have approached this Court to challenge the order of bifurcation of the Agricultural Produce Market Committee, Akkalkot effected by order dtd. 20th December 2006 passed under Section 44(1) of The Maharashtra Agricultural Produce Marketing (Regulation) Act of 1963. The Petitioners have also approached this Court seeking

direction that the election of Market Committee are overdue and that the respondents shall be declared as electionist of the Market Committee.

2) On going through the order of extension about postponement of election, it is noticed that the elections were postponed because certain other elections were in progress. Under these circumstances, by exercising the power under Section 59, the term of the office of the petitioners was extended and the said term is coming to an end on 30th June, 2007. Thus, we note that the petitioner is an office because of the extension orders granted by the respondents and while the said extended period was being enjoyed by the petitioner- market Committee and its members, the proceeding in respect of the bifurcation as stated above have commenced and order of bifurcation was passed. It has been challenged in this petition by effecting an amendment. Thus the purpose of this petition is to hold the elections of the petitioner- market committee and to challenge the bifurcation which has taken place during the pendency of the petition.

3) Mr. Kumbhakoni, Assistant Advocate General on instructions of the District Deputy Registrar,

Co-operative Societies, Solapur who is present in the Court makes a statement that the impugned order dtd. 20th December 2006 passed under Section 44(1) of The Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 is being withdrawn and further states that it will be open for the respondents to take appropriate action under Section 44 of the said Act, after effective consultation with the petitioner. Mr. Kumbhakoni states that even though the order has been challenged on several grounds, however, the vital ground is of non consultation with the Petitioner. He states that in view of objection of non-consultation with the Petitioner, the order is being withdrawn by the respondents. He states that appropriate action, after due compliance of Section 44, will be taken by the respondents and will be completed within a period of 8 weeks. Therefore, Mr. Kumbhakoni states that since the order is withdrawn, the respondent no. 4 will issue appropriate communication to the petitioner within 2 weeks from today for having effective consultation with the petitioner. He further states that upon receipt of said communication, the petitioner would take appropriate steps in that regard within a period of 3 weeks. He ultimately states that after due compliance, the respondent

no. 4 will pass an appropriate decision on its own merit in accordance with law under Section 44(1)) of the said Act within a further period of 3 weeks thereafter.

4) Mr. Kumbhakoni, learned Associate Advocate General on instructions of a Directorate of Marketing who is also present in the Court makes a statement that the period of the present market committee will be extended further initially for a period of 8 weeks, so that the proceeding in respect of the bifurcation can be completed after giving a hearing to the petitioner and body in Office. He further makes a statement that if ultimately considering the case on merits, the District Deputy Registrar comes to the conclusion that the bifurcation is not necessary and then the holding of elections becomes necessary, in that eventuality, the term of the present body will be further extended till the newly elected body enters into office. In view of this statement, we accept all statements made by Mr. Kumbhakoni on behalf of the respondents.

5) Mr. Godbole, learned counsel for the petitioners, at this stage, states that the election should not be withheld for hearing on

bifurcation proceeding. He states that as the order is being withdrawn, the respondents be directed to hold the elections. We find that the submission made by Mr. Godbole is not justifiable in the facts and circumstances because if the bifurcation is effected, then in those circumstances, after holding the election several complications would arise. Not only that but the election expenditure is also equally vested and therefore it will be proper first to test whether the bifurcation is to be made or not. If ultimately bifurcation is not commenced of the parties or the agriculturists, then the elections can be held at any stage because as per this statement made by Mr.Kumbhakoni, learned Associate Advocate General elections are postponed for 8 weeks, within which they desire to complete the proceeding under Section 44 of the said Act and therefore, we hereby reject the prayer made by Mr. Godbole for directing the election immediately after the withdrawal of an order under Section 44. Therefore, we pass the following order.

O R D E R

1) We accept the statement made by Mr. Kumbhakoni, learned Associate Advocate General and

we hold that the order dtd. 20th December 2006 passed by the District Deputy Registrar, Co-operative Societies, Solapur under Section 44(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, stands withdrawn.

2) We further direct that it will be open for the Respondents to take appropriate action under Section 44 of the said Act after having effective consultation with the petitioner.

3) We further direct that within a period of 2 weeks from today, the respondents shall issue appropriate communication to the petitioners calling upon for consultation on the point of bifurcation. After getting the said communication, we direct that within a period of 3 weeks, the petitioner shall submit their response to the said communications to the District Deputy Registrar, Co-operative Societies.

4) We make it clear that if there is no response received from the petitioner within the stipulated period, it will be open for the District Deputy Registrar to proceed an order under Section 44 on its own merits in accordance with law holding that the effective consultation is complete.

5) We further make it clear that all other points, in view of the fair order of bifurcation has been withdrawn by the respondents will be open for the petitioner to raise before the District Deputy Registrar when a fresh proceeding in respect of bifurcation will commence.

6) We further direct that initially the term of the board of the petitioner- market committee shall be extended by the respondent for a period of 8 weeks from 30th June 2007. If ultimately at the end of 8 weeks, the District Deputy Registrar decides not to bifurcate the petitioner- market committee, the respondent shall further extend the period of the petitioner-market committee till the newly elected body enters into office.

7) We further direct that in case the District Deputy Registrar decides not to bifurcate the market committee, then the respondent shall commence the steps towards the elections within a period of 2 weeks thereafter.

8) With these directions, we dispose of both the petitions.

9) Parties to act on an authenticated copy attested by the Court Sheristedar.

10) At this stage, Mr. Godbole, learned counsel for the petitioner submitted that in case the bifurcation order is passed, the said order be stayed for a further period of 2 weeks, so as to enable the petitioners to approach this Court. We are not in favour of accepting this submission, because the term of the present body of the petitioner has already come to an end one year back. Their term was extended for a period of 1 year. Even that period is coming to an end on 30th June, 2007, but to have a fair play in the matter, the Government made bare statement that term of the present body will be extended initially for further 8 weeks and/or till the newly elected body enters into office. In the circumstances, we do not find any equity in favour of the petitioners and its market committee for getting further protection from this Court in case the order of bifurcation is passed by the respondent. The prayer is rejected.

11) Mr. Godbole, learned counsel for the petitioner also submitted that the directions in respect of continuing with the bifurcation proceeding be stayed and the elections be directed.

The said prayer, in the facts and circumstances, is hereby rejected.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**